

## Haynes and Boone Secures Complete Victory for Financier Benjamin Wey

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PRACTICES Litigation

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New York federal prosecutors have dropped all criminal charges against high-profile private equity executive Benjamin Wey, indicted in 2015 for alleged securities fraud and related charges. A trial in the matter was scheduled for October 2017.

The rare voluntary dismissal by the United States Attorney's Office for the Southern District of New York comes in the wake of a June 13 ruling by U.S. District Judge Alison Nathan suppressing all evidence obtained by the government during searches of Mr. Wey's home and office in January 2012. Mr. Wey's Haynes Boone defense team argued that the government's search warrants were unconstitutionally drafted and that the FBI agents executing the searches indiscriminately seized virtually every scrap of paper and electronic device in Mr. Wey's home and office. Judge Nathan agreed that the government's searches violated Mr. Wey's Fourth Amendment right against unreasonable searches and seizures. FBI agents, the judge wrote in a 92-page opinion, conducted "sweeping physical and electronic searches lacking in any discernible parameter beyond the inappropriately broad terms of the warrants themselves."

"The government made the correct decision to drop charges in light of the significant constitutional violations described by Judge Nathan in her ruling," said Haynes Boone Partner David Siegal, counsel to Mr. Wey. "This case should serve as a powerful reminder for years to come that the government must adhere to fundamental safeguards of our privacy and liberty when conducting searches."

Benjamin Wey, CEO of New York Global Group, has steadfastly maintained his innocence. "I was wrongly charged in the first place," he said, "but I have always had faith in the American system of justice and I am grateful that justice has been served. My family and I offer our deepest gratitude to David Siegal and our stellar legal team at Haynes Boone for their extraordinary skill, and for their tremendous, tireless efforts on our behalf. The government's case was built on fabricated allegations and false statements that grossly misled federal authorities. This ordeal devastated our employees and our families, has done irreparable harm to our lives and closed our prospering businesses. We are thankful that this judgment will help clear my name and hopeful that it protects other innocent citizens from the intrusion that we have endured."

The FBI conducted a search of Mr. Wey's home and office in January 2012, indiscriminately gathering a broad array of documents and electronic material, including family medical records, x-ray films, PSAT score reports, photos of rural landscapes and college diplomas. It was not until September 2015 that the government obtained the indictment.

Mr. Wey's legal counsel at Haynes Boone filed a motion in 2016 to suppress evidence on the grounds that the government had conducted an unlawful "fishing expedition," using overbroad search warrants to sweep up any and all information about him.

The government argued that even if the warrants were unconstitutional, government agents acted in “good faith” and should therefore be allowed to rely on the seized evidence. While courts have recognized a “good faith” exception to legal restrictions on the use of illegally seized evidence, Judge Nathan opined: “The agents—who are charged with reasonable knowledge of what the law prohibits—appear to have disregarded well-established constitutional principles that provide a bulwark against the execution of general warrants . . . . That reflects, at the least, gross negligence or recklessness as to the potential for violation of the Fourth Amendment.” Accordingly, the court concluded that the good faith exception did not apply.